

**Ruth Nettles**

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**Sent:** Monday, May 18, 2009 2:13 PM  
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**Subject:** REVISED - Electronic Filing Docket No. 090079-EI - WITH DOCUMENT ATTACHED  
**Attachments:** PEF 5th Motion for Temp Protective Order.pdf

Matthew R. Bernier, Carlton Fields, P.A., 215 South Monroe Street, Ste. 500, Tallahassee, FL 32301, [mbernier@carltonfields.com](mailto:mbernier@carltonfields.com) is the person responsible for this electronic filing;

The filing is to be made in Docket 090079-EI, In re: Petition for rate increase in rates by Progress Energy Florida, Inc.;

The total number of pages is 4;

The attached document is Progress Energy Florida, Inc.'s Fifth Motion for Temporary Protective Order.

Thank you.

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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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IN RE: PETITION FOR INCREASE IN  
RATES BY PROGRESS ENERGY  
FLORIDA, INC.

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Docket No. 090079-EI  
Submitted for filing: May 18, 2009

**PROGRESS ENERGY FLORIDA, INC.'S FIFTH  
MOTION FOR TEMPORARY PROTECTIVE ORDER**

Progress Energy Florida, Inc. ("PEF"), by and through undersigned counsel, hereby moves pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code, for entry of a Temporary Protective Order covering confidential documents and information sought in discovery by the Office of Public Counsel ("OPC") and as grounds therefore states as follows:

1. In its Sixth Set of Requests for Production of Documents (Nos. 127-173), specifically numbers 132, 134, 146 and 150, OPC has requested the discovery of confidential information the disclosure of which could harm PEF's competitive business interests and would violate contractual confidentiality provisions.

2. Specifically, the requested information includes information such as Purchased Power Agreement ("PPA") estimates, information relating to a revolving credit agreement, information relating to PEF's credit rating, and correspondence between PEF and credit rating agencies. Such information, if made available to the public, could place PEF at a competitive disadvantage with respect to competitors as well as parties with which PEF would hope to contract in the future. If potential purchasers, third parties with which PEF would like to contract, and competitors had PEF's confidential information, they would be able to adjust their

behavior in the market place by adjusting the price of any potential offer. See § 366.093(3)(e), Fla. Stat.

5. Section 366.093(2), Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code, direct that all records produced pursuant to a discovery request for which proprietary confidential status is requested shall be treated by public counsel as confidential and shall be exempt from the public records law, Section 119.07(1), Florida Statutes. PEF, by this motion, is seeking protection of all confidential information that PEF will produce to OPC in this matter pursuant to OPC's Sixth Set of Requests for Production of Documents, as more specifically stated above. PEF has recorded the appropriate objections to providing such confidential, proprietary business information, and will provide documents and information responsive to these requests marked as confidential subject to this motion, the law, Commission rules, and PEF's objections. By following this procedure and producing this information, PEF is not waiving its right to seek further relief as necessary to make certain that its confidential, proprietary, business information is not publicly disclosed.

6. PEF further requests that in connection with the entry of a temporary protective order, the Commission also require Public Counsel to provide PEF with notice of its intent to use such confidential information in connection with the hearing in this matter.

WHEREFORE, PEF requests that the Commission enter an Order granting its Motion for Temporary Protective Order relating to information identified as confidential and produced in response to OPC's Sixth Set of Requests for Production of Documents (Nos. 127-173), specifically numbers 132, 134, 146 and 150, instructing Public Counsel to continue to treat it as confidential, and requiring Public Counsel to provide PEF with notice of its intent to use such

confidential information in connection with the hearing in accord with the prehearing order governing procedure.

Respectfully submitted,



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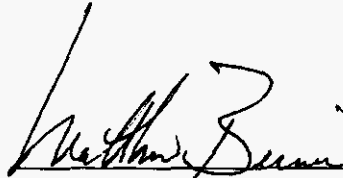
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via electronic and U.S. Mail to the following counsel of record as indicated below on this 18<sup>th</sup> day of May, 2009.

  
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